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Proposal No. 33 RELATING TO A HEALTHFUL ENVIRONMENT

Statement for
Con Con Committee on Public Health
and Welfare, Labor and Industry
Public Hearing 26 July 1978

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Proposal 33 amends Article VIII of the Constitution by adding a new section entitled "Preservation of a Healthful Environment." This statement does not reflect the institutional position of the University.

The intent of the proposed amendment is clearly worthy. However, its effect may be negligible, and it seems to overstate the powers that the legislature can actually exercise.

Under Article VIII, Section 1, the State is already charged with the protection and promotion of the public health. Although this section does not specify that, with respect to legislation, the charge rests with the legislature, that is clear from Article III, Section 1. Although Article VIII, Section 1 does not relate specifically to the environmental aspects of health, it in no way excludes them. Furthermore, under Article X, Section 1, the legislature already has not merely the power but the duty to "promote the conservation, development, and utilization of...natural resources." Natural resources are commonly considered to include not only such tangible environmental entities as the air and water, but the less tangible aspects of beauty, and quietness that affect public health.

Under the present constitution, therefore, the legislature thus appears to have the power to promote a healthful environment for the people.

In proposing to extend the power from promotion to maintenance of a healthful environment, the amendment seems to suggest a more-than-human capability. No power granted by the Constitution will enable the legislature to assure that natural impediments to health can be eliminated.

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The proposed amendment would not only purport to provide the basic power discussed above, but authorize certain means, namely the enactment of "legislation to prevent excessive demands upon the environment and the State's resources." Such authorization is surely provided already under the part of Article X, Section 1 quoted above. The combination of conservation (which is generally held to mean a wise balance of preservation and use) with development and utilization seems to give undue weight to development and destructive utilization and inadequate weight to preservation and non-destructive utilization. However, it seems entirely within the discretion of the legislature to determine where the proper balance should be.

It does not appear that the legislature now lacks any of the constitutional authority that the proposed amendment can actually provide. However, there may be some advantage to highlighting the interconnection between the environment and public health somewhat in the manner proposed.

An alternative to the proposed amendment that might be considered would be the recognition that there are human rights to a healthful environment equivalent to other fundamental rights now recognized on the constitution.